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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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APR 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

**TARIFF FILING REQUIREMENTS
FOR NONDOMINANT COMMON CARRIERS**

CC Docket No. 93-36

To: The Commission

REPLY COMMENTS

PacTel Paging
Arch Communications Group, Inc.
AACS Communications, Inc.
Centrapage, Inc.
Crowley Cellular
Telecommunications, Inc.
Kelley's Tele-Communications
Nunn's Communications Services,
Inc.
Radio Electronic Products
Corporation

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Summary of Reply Comments

On March 29, 1993, the parties to this joint reply filed a comprehensive set of comments in support of the Commission's proposal to streamline the federal tariff requirements applied to nondominant carriers to the maximum extent permitted by law.

In this reply, the Joint Commenters survey the various comments that have been filed by other parties in this proceeding. The conclusion is that the record provides overwhelming support for simplifying both the substance of and the procedures applicable to nondominant carrier tariffs.

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PacTel Paging, Arch Communications Group, Inc., AACS Communications, Inc., Centrapage, Inc., Crowley Cellular Telecommunications, Inc., Kelley's Tele-Communications, Nunn's Communications Services, Inc., and Radio Electronic Products Corporation (collectively, the "Joint Commenters") hereby submit their reply comments in the above-captioned proceeding in which the Commission proposes to simplify and streamline the federal tariff requirements applicable to nondominant carriers.

I. Preliminary Statement

1. Approximately forty-five interested parties filed comments in response to the Notice of Proposed Rulemaking, FCC 93-103, released February 19, 1993 (the "Notice").^{1/} These commenting parties represent a diverse cross-section of the telecommunications industry including dominant carriers, nondominant carriers, facility-based carriers, resellers, long distance companies, local exchange carriers ("LECs"), land mobile operators and industry associations with members spanning every potentially affected group. Viewed as a whole, these comments provide overwhelming support for the streamlining of tariff filing obligations for nondominant carriers, including land mobile service providers.^{2/} In addition, they offer

^{1/} Comments were filed by Ad Hoc Telecommunications, Aeronautical Radio, American Public Communications Council ("APCC"), Ameritech, Association of Local Telecommunications Services ("ALTS"), AT&T, Avis Rent-A-Car, Bell Atlantic, Bell South, Capital Cities/ABC and NBC, CTIA, Century Cellunet, Competitive Telecommunications Association ("CTA"), Electric Lightwave, GE American Communications, General Communication, Information Technology Association of American ("ITAA"), International Communications Association ("ICA"), Link USA, Local Area Telecommunications, McCaw, MCI, MFS Communications Company, Mobile Marine Radio, National Telephone Cooperation Association ("NTCA"), NYNEX, Small Business Administration ("SBA"), Pacific Bell/Nevada Bell, PacTel Corporation, Penn Access Corporation, Pilgrim Telephone, RCI Long Distance, RGT Utilities, Kenneth Robinson, Southwestern Bell, Sprint, Telecom Services Group ("TSG"), Tele-Communications Association, Telecommunications Resellers Association ("TRA"), Teleport Communications Group (TCG"), Telocator, Two-Way Radio and USTA.

^{2/} Some dominant carriers who would be subject to more rigorous tariffing requirements consider the relaxation of tariff
(continued...)

considerable support for some of the ideas advanced by the Joint Commenters in their Joint Comments filed March 29, 1993, to further reduce the burdens of the tariff process on nondominant carriers.

II. Others Support the Complete Elimination
of Tariffing for Nondominant Carriers

2. The Joint Commenters urged the Commission not to accept the simplification of nondominant tariff procedures as a suitable alternative to the complete detariffing of segments of the communications industry, like the land mobile industry, which are highly competitive. This position has been echoed by others in their comments.

3. For example, ALTS "strongly urges the Commission to take all available judicial and legislative action necessary to reinstate the forbearance policy..." ALTS Comments at p. 2. Similarly, Century Cellunet, McCaw, Two-Way Radio and Telocator properly note that land mobile companies have never been tariffed and never should be. Century Cellunet Comments at p. 2; McCaw Comments at p. 2; Two-Way Radio Comments at p.1; Telocator Comments

^{2/}(...continued)

requirements for nondominant carriers to be unfair. Their argument, however, is based upon their need for a "level playing field" and not upon any stated benefit of subjecting nondominant carriers to burdensome tariffing procedures. This view, of course, does not significantly alter the land mobile industry arguments for a complete relaxation of tariffing requirements for land mobile carriers because there is no disparity of treatment between the land mobile common carrier service providers (e.g., all paging and cellular carriers are classified the same).

nondominant carriers from federal tariff requirements.^{5/} These efforts also deserve the Commission's support.

III. The Notice Period Should be Shortened

6. The Notice proposed allowing nondominant carriers to file tariffs on not less than one-day's notice.^{6/} The Joint Commenters supported this proposal, as did nearly all of the other commenting parties.^{7/} In the very few instances in which the one day filing period was challenged, the objections are not persuasive.

7. NYNEX, Sprint and Capital Cities/ABC/NBC oppose the one-day notice period on the ground that it is too short to give

^{5/} The Commission should not rely on the legislative efforts to yield a solution anytime within the next several months. Accordingly, the Commission should use its ability to interpret the Communications Act to construe the exemptions to federal regulation broadly.

^{6/} The Joint Commenters also proposed that tariff filings could be made after the effective date of the tariff. It matters little whether the tariff filing is made on 1 day notice or after the fact because in either instance the review for its validity will be done after it becomes effective. Some state regulatory jurisdictions, such as California, permit some tariff filings to be made after the effective date. See, e.g., California General Order 96-A.

^{7/} Only four commenters opposed the shortening of the notification period to one day. As discussed in the text, these objections appear to arise out of particular competitive circumstances that do not pertain to the land-mobile industry.

the Commission sufficient time to conduct a meaningful review.^{8/} This argument overlooks the fact that limitations on the availability of FCC staff mean that the overwhelming majority of tariff filings are not subjected to substantive review.^{9/} It makes no sense to subject all filers to 14 day notice requirements to preserve time for a Commission review that it cannot conduct. The better approach is to shorten the filing period while preserving the ability of the Commission later to suspend a tariff which is found to be unreasonable.

8. Mobile Marine Radio and TSG suggest that the one-day notice rule should apply only to rate decreases, not to rate increases.^{10/} However, in highly competitive services such as the land mobile services where prices are set by market forces, a rate increase is no more likely to result in the suspension of a tariff

^{8/} See Sprint Comments at Section IV; NYNEX Comments at Section III; Capital Cities Comments at pp. 4-5. Sprint also argues that it has not found the 14 day notice provision to be unduly burdensome. Sprint is, however, a large company with substantial in-house tariffing capabilities. The 14 day filing requirement will prove much more burdensome to other nondominant carriers who do not have Sprint's resources or familiarity with the tariffing process.

^{9/} The Joint Commenters believes this will be especially true if a substantial portion of the land mobile carriers file tariffs.

^{10/} Mobile Marine Comments at pp. 3-4; TSG Comments, Section A.

than a rate decrease.^{11/} Applying a different filing notice period would needlessly complicate the tariffing process.

9. On balance, the Commission's proposal is sound, and the one-day notice period should be adopted with respect to all nondominant carrier tariffs.

IV. Tariff Content Requirements Must be Relaxed

10. The Joint Commenters strongly supported the Commission's proposal to reduce tariff content requirements to the maximum extent permitted by law. As a general rule, the other commenters support this view. For example, the Ad Hoc Telecommunications Committee concurs that nondominant carriers should file only the bare minimum information required by the Act. Ad Hoc Telecommunications Comments at p. 9. Avis Rent-A Car, Local Area Telecommunications, McCaw, PacTel Corporation, RCI Long Distance and Telocator also strongly support the reduction of

^{11/} In fact, requiring a disparity between rate decreases and rate increases may allow for anticompetitive behavior. As the Department of Justice has recently found with respect to the airline industry, tariff filings can be used to signal rate intentions to competitors. Requiring rate increases to be subject to a 14 day waiting period would allow competitors to react with similar filings (thus accepting the new rate) or allow the proponent to rescind the proposed rate increase (if the other competitors do not follow with matching rate increases).

filing burdens to the maximum extent possible.^{12/} Thus, the Commission proposal enjoys substantial support.

11. The proposal to allow nondominant carriers to file maximum rates, or a range of rates, also received enthusiastic support from a large number of commenters^{13/}, but also generated some controversy. AT&T, Bell Atlantic, Mobile Marine Radio, NTCA and NYNEX all argue that maximum rates or ranges of rates do not satisfy the statutory tariff requirement of the Act.^{14/}

12. The Commission should not be dissuaded from adopting maximum or range tariff based upon the sparse adverse comments that were filed.^{15/} The original comments of the Joint Commenters included an analysis of the statutory provisions which create the tariff obligation. See Comments of PacTel Paging et. al. at paras. 14-16. This analysis supports the conclusion that the Commission

^{12/} Avis Comments at Section II; Local Area Telecom Comments at p.4; McCaw Comments at p. 5; PacTel Corp. Comments at p. 10; RCI Comments at Section III.

^{13/} Maximum rates or range rates were specifically endorsed by APCC at Section III, Ameritech at p. 5, ALTS at p. 8, Avis at p. 6, CTIA at p. 4, CTA at Section III, Link USA at pp. 3-4, Local Area Telecom. at p. 8, McCaw at p. 3, MCI at p. 14, MFS at p. 10, PacTel Corp. at p. 9, RCI Long Distance at p. 6, RGT Utilities at pp. 2-3, Southwestern Bell at p. 16, Sprint at pp 5-6, TRA at p. 5 and TCG at p. 2.

^{14/} See AT&T Comments at Section I; Bell Atlantic Comments at p. 9; Mobile Marine Comments at pp. 5-6; NCTA Comments at pp. 2-3; NYNEX Comments at 6-7.

^{15/} Indeed, the Joint Commenters suspect that the opposition from some of these commenters stem more from their status as a dominant carrier than from a realistic belief that maximum rate charges are improper. Indeed, AT&T currently enjoys a kind of rate banding tariff because it can make certain changes to its tariff without Commission approval.

does indeed have the authority to accept maximum or range rates from filers. The conclusion of the Joint Commenters finds substantial support in the comments of others. See note 13, supra. The contrary view that a range or maximum tariff does not constitute an adequate schedule of charges is not well considered.^{16/}

13. The Joint Commenters offered the suggestion that the tariff filing burdens be further reduced by allowing nondominant carriers to incorporate portions of previously filed tariffs of other carriers by reference without going through the cumbersome "concurring carrier" process. Other commenters have also espoused this view.^{17/} The spontaneous support for this method of simplification should be given great weight by the Commission and the proposal adopted.

14. Several commenting parties express concern that the filing of a federal tariff should not be allowed to enable a carrier to abrogate a rate agreed upon in a long term contract with

situations in which the unique circumstances of a particular customer justify a rate at variance from the tariffed rate.^{18/} In keeping with its desire to streamline the tariff process, the

the filer (i.e. dominant vs. nondominant) but rather upon the status of the industry (i.e. competitive or noncompetitive). See, e.g., Comments of Bell Atlantic, Bell South, Pacific Bell/Nevada Bell and USTA. The Joint Commenters note that members of the land mobile industry would be subject to relaxed requirements under either approach.^{21/} The mobile radio and paging industries are indeed highly competitive and individual participants are all nondominant. Thus, the debate between dominant and nondominant carriers in segments of the industry that are subject to varying tariff requirements (i.e. the long distance and local exchange carrier business) should not be allowed to distract attention away from the fact that the land mobile industry is in dire need of relief from the Court's recent tariff order.

^{21/} The Joint Commenters support any view that would lead to the conclusion that the paging and cellular industry should not be subject to relaxed filing requirements.

Conclusion

The foregoing premises having been duly considered, the Joint Commenters respectfully request that the tariff filing requirements for nondominant carriers be streamlined as set forth herein.

Respectfully submitted,

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April 19, 1993

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CERTIFICATE OF SERVICE

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